

system fees annually to ensure that dissemination costs are paid for from user fees.

## II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The OS/ARD subsystem, which was activated on April 20, 1992, is a central electronic facility through which information collected and stored, pursuant to MSRB rule G-36, is made available electronically and in paper form to market participants and information vendors.<sup>2</sup> The annual subscription fee for daily tapes of images of current year documents from the OS/ARD system is \$12,000.<sup>3</sup> The fees for backlog document collections are substantially less than fees for an annual subscription because an annual subscription requires the Board to send a computer tape to the subscriber each business day, but a backlog collection requires fewer tapes.<sup>4</sup>

In its prior filings with the Commission, the Board stated that it intends to use its general revenues for collection, indexing and storing the OS/ARD subsystem's documents, and that the costs of producing and disseminating magnetic tapes (and paper copies) would be paid for by user

fees.<sup>5</sup> Thus, the Board is establishing fees to defray its cost of disseminating backlog tapes. This is consistent with the Commission's policy that self-regulatory organizations' fees be based on expenses incurred in providing information to the public. The Board believes that employing cost-based prices is in the public interest since it will ensure that a complete collection of vital information will be available, at fair and reasonable prices, for the life of the municipal securities.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which requires, in pertinent part, that the Board's rules:

Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSIL system is designed to increase the integrity and efficiency of the municipal securities market by, among other things, helping to ensure that the price charged for an issue in the secondary market reflects all available official information about that issue. The Board believes that the 1994 backlog fee is fair and reasonable in light of the costs associated with disseminating the information, and that the services provided by the MSIL system are available on reasonable and nondiscriminatory terms to any interested person.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(e) thereunder because the proposal is "establishing or

changing a due, fee or other charge." At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR-MSRB-95-7 and should be submitted by [insert date 21 days from the date of publication].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-35849; File No. SR-MSRB-95-8]

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Delivery of Official Statements to the Board

June 14, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, notice is hereby given that on June 1, 1995, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the

<sup>2</sup> Rule G-36 requires underwriters to provide copies of final official statements and advance refunding documents within certain specified time frames for most new issues issued since January 1, 1990.

<sup>3</sup> This fee was filed with the Commission. See Securities Exchange Act Release No. 30306 (Jan. 30, 1992) 57 FR 4657. The Board does not intend at this time to change the OS/ARD annual subscription fee.

<sup>4</sup> Currently, two to three business day's worth of documents are on each tape in an annual collection. The backlog fee plus delivery costs for 1993 is \$9,000; 1992 is \$7,000; 1991 is \$8,000; 1990 is \$6,000. These fees were filed with the Commission. See Securities Exchange Act Release No. 32482 (June 16, 1993) 58 FR 34115 (1992 and 1990 fees); Securities Exchange Act Release No. 34602 (Aug. 25, 1994) 59 FR 45319 (1993 and 1991 fees). The fees for the backlog collections vary based on the number of documents received and processed in any given year.

<sup>5</sup> See Securities Exchange Act Release No. 29298 (June 13, 1991) 56 FR 28194.

<sup>6</sup> 17 CFR 200.30-3(a)(12)

Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change (File No. SR-MSRB-95-8). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The MSRB is filing a proposed rule change to rule G-36 and Form G-36(OS), relating to delivery of official statements to the Board (hereafter referred to as the "proposed rule change") to correlate references to SEC Rule 15c2-12<sup>1</sup> to the amended sections of the Rule and to add language to Form G-36(OS) to clarify that documents submitted with the Form will be made publicly available. The Board requests that the proposed rule change be effective on the same effective date as that for certain amendments to Rule 15c2-12, set for July 3, 1995, to which the proposed rule change refers.

### **II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

#### **A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

On November 10, 1994, the Commission approved amendments to its Rule 15c2-12 to enhance disclosure in the secondary market for municipal securities.<sup>2</sup> The amendments revised and reorganized the subparts of the Rule. Part of these amendments will be effective in July 1995, while other parts will go into effect in January 1996.

Board rule G-36 requires that managing underwriters deliver to the Board copies of final official statements for most primary offerings of municipal securities, where an official statement

was prepared. Rule G-36 also requires Form G-36(OS) to be sent with the official statement into the Municipal Securities Information Library ("MSIL") system.<sup>3</sup> Rule G-36 applies to all primary offerings with official statements, with the exception of limited placements which are exempt under SEC Rule 15c2-12.

Rule G-36 and Form G-36(OS) reference, in several places, the definitions once found in SEC Rule 15c2-12(e) and the exemption found in Rule 15c2-12(c). However, since the amendments to Rule 15c2-12 moved the definitions to Rule 15c2-12(f) and the exemption to Rule 15c2-12(d), the proposed rule change to rule G-36 (a)(i), (a)(ii), and (c)(iii) and Form G-36(OS) update the citations to Rule 15c2-12 to correspond to the revised subparts of the amendments. The proposed rule change also makes a conforming change to the Form by adding the word "or" to item 10(c).

The proposed rule change to Form G-36(OS) also makes clear that any documents submitted to the Board with the Form will be public disseminated. The MSIL System has received several disclosure documents relating to primary offerings exempted from Rule 15c2-12 under current section (c)(1) ("limited placements"). Even though such primary offerings are exempt from Rule 15c2-12 and rule G-36, the Board has previously made clear in filings and in *MSRB Reports* that if such documents are voluntarily submitted to the MSIL system by dealers as official statements, they will be accepted and publicly disseminated.<sup>4</sup> A few recently received documents on limited placements contained language stating that they were not to be reproduced or used for any purpose other than in connection with the sale of the securities. Accordingly, the proposed rule change to Form G-36(OS) adds language clarifying that the submitter "acknowledges that the document will be publicly disseminated." This addition will ensure that the submitter has agreed to public dissemination of the submitted document.

The Board believes the proposed rule change is consistent with Section

15B(b)(2)(C) of the Act, which provides that the Board's rules:

Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and in general, to protect investors and the public interest.

#### **B. Self-Regulatory Organization's Statement on Burden on Competition**

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

#### **C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others**

The Board has neither solicited nor received comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) was provided to the Commission for its review at least five days prior to the filing date; and (4) does not become operative for thirty days from the date of its filing on June 2, 1995, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(e)(6) thereunder. In particular, the Commission believes the proposal would qualify as a "non-controversial filing" because it makes technical and clarifying changes to an existing MSRB rule and form. Accordingly, it neither significantly affects the protection of investors or the public interest and does not impose any significant burden on competition. At any time with sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, arguments concerning the foregoing. Persons

<sup>1</sup> 17 CFR 240.15c2-12.

<sup>2</sup> See Securities Exchange Act Release No. 34961 (Nov. 10, 1994) 59 FR 59590.

<sup>3</sup> The Municipal Securities Information Library system and the MSIL system are trademarks of the Board. The MSIL system, which was approved in Securities Exchange Act Release No. 29298 (June 13, 1991) 55 FR 29436, is a central facility through which information about municipal securities is collected, stored, and disseminated.

<sup>4</sup> See e.g., File No. SR-MSRB-90-2 at 16; "Delivery of Official Statements to the Board: Rules G-36 and G-8," *MSRB Reports*, Vol. No. 3 (July 1990).

making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR-MSRB-95-8 and should be submitted by July 11, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-35847; File No. SR-NASD-95-20]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Failure to Honor Settlement Agreements Obtained in Connection With an Arbitration or Mediation**

June 14, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 9, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the NASD.<sup>1</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>5</sup> 17 CFR 200.30-3(a)(12)

<sup>1</sup> The NASD originally submitted the proposed rule change on May 10, 1995. The NASD subsequently submitted two minor technical amendments, the text of which may be examined in the Commission's Public Reference Room. See Letters from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Division of Market Regulation, SEC (May 16, 1995 and June 9, 1995). This notice reflects those amendments.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NASD is proposing to amend the Resolution of the Board of Governors—Failure to Act Under Provisions of Code of Arbitration Procedure ("Resolution") to make the following acts a violation of Article III, Section 1 of the Rules of Fair Practice: (a) A failure to honor a written and executed settlement agreement obtained in connection with an arbitration conducted under the auspices of a Self-Regulatory Organization ("SRO"); and (b) a failure to honor a written and executed settlement agreement obtained in connection with a mediation conducted under the auspices of the NASD. The instant filing also proposes to amend Article VI, Section 3 of the NASD By-Laws to permit the NASD to suspend or cancel the membership or registration of a member or associated person for failing to honor a written and executed settlement agreement obtained in connection with an arbitration or mediation conducted under the auspices of the NASD.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**1. Enforcing Settlement Agreements**

In connection with the administration of its arbitration program the NASD states that many disputes or claims for damages submitted to arbitration before the NASD, or another SRO forum or the American Arbitration Association ("AAA"), are settled prior to a hearing on the merits. In addition, the NASD is currently developing a mediation program, to be administered in connection with the arbitration program, where parties will be participating in a process that the NASD believes will increase the number of

claims that are settled prior to a hearing.<sup>2</sup>

The NASD also notes that occasionally members and persons associated with members fail to comply with settlement agreements reached in connection with arbitration proceedings. These settlements may have been reached prior to the hearing on the matter and, as a result, the hearing is canceled only to be rescheduled following a party's failure to honor the settlement. In other cases, matters are settled and claims withdrawn only to be refiled later after a member or associated person fails to honor the agreement.

The NASD is concerned that a failure by a member or associated person to honor a settlement agreement imposes substantial added costs on the prevailing party or parties in the form of delayed recoveries, actions to enforce the agreements and additional fees connected with short-notice cancellation of hearings. The NASD's Arbitration Department also incurs additional costs in rescheduling hearings, and on occasion has had to appoint new arbitrators to hear a matter. In addition, the NASD believes that the credibility of the arbitration process suffers if members and their associated persons are able to delay the resolution of a dispute by failing to honor a settlement agreement.

The Resolution states that "it may be deemed \* \* \* a violation of Article III, Section 1 of the Rules of Fair Practice for a member or person associated with a member to \* \* \* fail to honor an [arbitration] award \* \* \*." The Resolution was adopted in 1973 and has been used to discipline members and associated persons who fail to pay an arbitration award unless they have moved to vacate the award.<sup>3</sup> The Resolution applies to awards rendered in NASD arbitrations, as well as arbitrations sponsored by other SROs and the AAA.

The NASD believes that the failure by a member or associated person to honor a settlement agreement entered into in connection with an arbitration proceeding or a mediation should have the same consequences as the failure to pay an arbitration award. Therefore, the NASD is proposing to amend the Resolution to make the failure by a member or associated person to honor a written and executed settlement

<sup>2</sup> The NASD has separately submitted a proposed rule change relating to the establishment of a Mediation Program. See Securities Exchange Act Release No. 35830 (June 9, 1995).

<sup>3</sup> Under the Federal Arbitration Act and many state statutes such a motion to vacate must be filed within 90 days after the award is rendered.